

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

IN RE: RICHARD FICKETT
AAD NO. 93-014/GWE
(NOV. UST 03204)

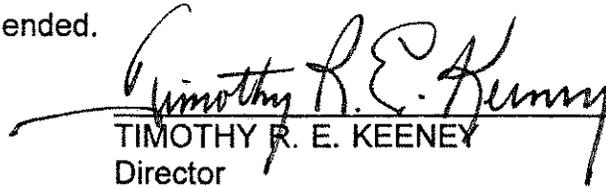
FINAL DECISION AND ORDER

I have thoroughly reviewed the Administrative Record and Recommended Decision and Order prepared by the Hearing Officer. I have also reviewed the Motion For A Stay and the Memorandum Of Law submitted in support of the Motion for Reconsideration. Although the specific issue of the production of the evidence was not raised in the context of this hearing, and the governing regulations are silent with respect to whether it is the Division's burden to go forward with evidence of the penalty assessment and calculation, the Department must provide an interpretation of its own regulations.

As I read the Recommended Decision And Order, it remains clear that in an enforcement hearing the division "must prove the alleged violation by a preponderance of the evidence." Rules and Regulations for Assessment of Administrative Penalties, Section 12(c). This includes establishing, in evidence, the penalty amount and its calculation. The violator then bears the "burden of proving by a preponderance of the evidence that the Division failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with [the Rules and Regulations for Assessment of Administrative Penalties]." Id.

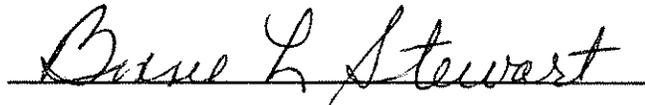
Based upon the foregoing, I hereby adopt the Findings Of Fact and
Conclusions Of Law as recommended.

December 9, 1995
Date


TIMOTHY R. E. KEENEY
Director

CERTIFICATION

I hereby certify that I caused a true copy of the within Final Decision and Order to be forwarded to Attorney Leonard L. Bergersen, 1070 Kingstown Road, P. O. Box 218, Peacedale, Rhode Island 02883-0218 via regular mail, postage prepaid and to Attorney Brian a. Wagner, Department of Environmental Management, Office of Legal Services, 9 Hayes Street, Providence, RI 02903 via inter-office mail this 11th day of December, 1995.


Bruce L. Stewart